

LEGISLATIVE RESEARCH COMMISSION

LEASING OF STATE LAND



REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA

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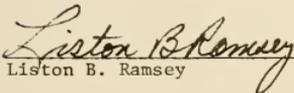
January 12, 1983

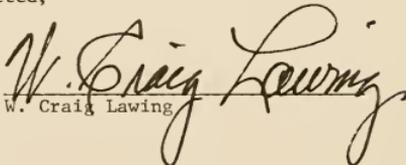
TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1983 General Assembly on the matter of The Leasing of State Land by Competitive Bidding. The report is made pursuant to Resolution 61, Section 1 (11) (e) of the 1981 General Assembly.

This report was prepared by the Legislative Research Commission's Study Committee on Leasing of State Land and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey


W. Craig Lawing

Cochairmen
Legislative Research Commission

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INTRODUCTION

The Legislative Research Commission (LRC), created by Article 6B of General Statutes Chapter 120, is authorized at the direction of the General Assembly "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" and "to report to the General Assembly the results of the studies made," which reports "may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations." G.S. 120-30.17. The Commission is chaired by the Speaker of the House and the President Pro Tempore of the Senate, and consists of five Representatives and five Senators, who are appointed respectively by the Cochairmen. G.S. 120-130.10(a). The membership of the Commission is listed in Appendix A.

The 1981 General Assembly, in Resolution 61 of the 1981 Session Laws, gave discretionary authority to the LRC to study a number of topics which were contained in various 1981 bills and resolutions. Among those topics authorized to be studied were matters related to public property, including the question of competitive bidding outlined in Senate Joint Resolution 178. Resolution 61, 1981 Session Laws, Section 1(11)(e). It directs the LRC to "...study whether and under what circumstances the sale or lease of State-owned land and related property should be by competitive bidding." A copy of S.J.R. 178 is in Appendix C.

Pursuant to G.S. 120-30.10(b) and (c), the Commission Cochairmen appointed a Study Committee consisting of three

Senators, three Representatives, and an LRC member to be in charge of the study. One Senator and one Representative were designated as Cochairmen of the Committee. See Appendix B for the Committee membership.

This report presents a background and legislative history of the Study, a summary of the Committee proceedings, the Committee findings, and its recommendations. On the basis of the Committee's findings no legislation was proposed. Rather than burdening the report with numerous appendices, they have been kept to a minimum. Most of the materials referred to in the text can be obtained from the Legislative Library.

BACKGROUND AND LEGISLATIVE HISTORY

This study was primarily concerned with the disposition of State-owned lands. Land is defined as "...real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, options, and all other rights, estates, and interests in real property." G.S. 146-64(3). The study was in response to criticism of State government relating to the selling and leasing of State-owned property. It was alleged that the State was not receiving the amount of money that it should when State-owned lands were either leased or sold to private individuals. The Committee considered only the disposition, i.e., the selling and leasing of the State's ownership interest in all forms of real property. (See Committee Minutes of September 17, 1982.)

The specific issue which the Committee addressed was whether or not, without exception, competitive bidding should be required for the selling or leasing of State-owned real property.

The authority for this study was given by Resolution 61 (H.J.R. 1292) of the 1981 Session Laws. That Resolution gave discretionary authority to the Legislative Research Commission (LRC) to study the matters relating to public property, including the question of competitive bidding outlined in S.J.R. 178, a committee substitute for the original S.B. 178, which directs the LRC to "...study whether and under what circumstances the sale or lease of State-owned land and related property should be by competitive bidding." To this end the Leasing of State Land Committee was created.

S.B. 178 was originally introduced to rewrite G.S. 146-29, which deals with the procedures for sale, lease or rental of State-owned lands or lands owned by State agencies. G.S. 146-29 essentially provides if the Department of Administration determines that a proposed sale, lease or rental "is in the best interest of the State" the Department is to proceed with the transaction in accordance "with the rules adopted by the Governor and approved by the Council of States. Of course, the Governor and the Council of State have the ultimate authority to approve or disapprove the transaction."

The bill in the original draft proposed that all sales, leases, and rentals of State land be by competitive bidding pursuant to procedures outlined in G.S. 143-152 (that section deals with, among other things, competitive bidding in the purchases and contracts) and pursuant to the proposed rewrite of G.S. 146-29. Other proposals in the original S.B. 178 were: (1) that rules adopted are to "designate categories of State land and set maximum periods for leases for each category"; (2) that "acceptance shall be made of the highest and best bid most advantageous to the State" as determined by a list of considerations (See page 2 of the bill, Appendix C); (3) that the Attorney General "...assist in the evaluation of the bids and in the drawing of conveyances and leases"; and (4) that "any sale, lease, or rental of State land made contrary to the provision of this Article [i.e., 146-29] shall be void and of no effect."

The bill was referred to the Senate Committee on State

Government on February 27, 1981. The former Director of the State Property Office, Mr. J. K. Sherron, in a memorandum dated March 19, 1981, to Senators Rauch, Smith and Hancock, pointed out what he perceived to be problems with the bill as it was proposed.

Mr. Sherron pointed to numerous areas of potential problems if S.B. 178 was enacted as proposed. They were:

- (1) Rentals of stalls to vendors at State-owned and operated Farmers Market facilities.
- (2) Rental of booths to civic organizations at the State Fairgrounds.
- (3) Rental of dormitory rooms to college students at State-supported universities and colleges.
- (4) Rental of hospital beds to patients at State-owned and operated medical facilities.
- (5) Rental of State-owned entertainment facilities such as Dorton Arena, Stewart Theatre, etc.
- (6) Rental of National Guard armories to civic organizations for various community related activities.
- (7) Granting of easements to utility companies, counties and municipalities for the construction, installation and maintenance of electrical transmission lines, telephone lines, water and sewer lines, etc.
- (8) Leasing of land or improvements to counties, municipalities or local school boards for special use purposes such as the construction and development of parks, school bus sheds, etc.
- (9) Leasing of land or improvements to private non-profit organizations who provide useful services to disadvantaged segments of society as is exemplified by the lease agreement from the State to the Tammy Lynn Center for Retarded Children for a nominal consideration.
- (10) Leasing of land for its fair market value to individuals, partnerships or corporations who

construct facilities which provide employment and expansion of the local economic base to relatively poor and undeveloped counties or regions within the State.

Mr. Sherron concluded in his memorandum that the positive results intended by the bill "...will be negated by the additional bureaucracy and expense which will result..." See memorandum to Senators Rauch, Smith and Hancock from J. K. Sherron on March 19, 1981.

On May 7, 1981, a Committee Substitute in the form of a Senate Joint Resolution was presented to the Senate. It authorized the Legislative Research Commission to "...study whether and under what circumstances the sale or lease of State-owned land and related property should be by competitive bidding." The committee substitute also directed that "consideration should be given to situations where competitive bidding might not be appropriate...." This Senate Joint Resolution was eventually incorporated into Resolution 61 of the 1981 Session Laws.

The Legislative Research Commission, as mentioned above, created a committee to study the matters outlined in S.J.R. 178.

COMMITTEE PROCEEDINGS

The study committee met on Friday, September 17, 1982. It examined the present North Carolina statutory provisions, and the current practices and procedures for selling and leasing State-owned property. The Committee also examined the methods of selling and leasing State-owned property in several other states, and considered the remarks of various interested persons on the subject matter of the study.

A. SUMMARY OF NORTH CAROLINA LAW DEALING WITH
THE DISPOSITION OF STATE-OWNED LAND

The statutory provisions, which generally prescribe the manner in which State-owned land is to be disposed, are outlined in Chapter 146, Article 7 of the General Statutes. All sales, leases, or rentals of land owned by the State or by a State agency are to be made by the Department of Administration, and are approved by the Governor and the Council of State. G.S. 146-27.

If a State agency wants to sell, lease or rent land which it owns it must file an application with the Department of Administration (D.O.A.). The D.O.A. must "promptly investigate" all aspects of the proposed transaction. It must particularly look at the present and future State needs for the particular land to be conveyed. G.S. 146-28.

After the D.O.A. investigates the proposed transaction, and it determines that the sale, etc., is in the best interest of the State, it then must proceed with the sale, lease, or rental "in accordance with the rules adopted by the Governor, and approved by the Council of State." When the agreement to sell, etc., is reached "the proposed transaction shall be submitted to the Governor and Council for their approval or disapproval. G.S. 146-29.

The rules promulgated by the Governor and the Council of State give to the various agencies, and to the State Property Office, through the Department of Administration, discretion to enter certain lease arrangements without the approval of the Council of

State. Generally, if the property is to be rented for less than \$5,000 per year for a period of less than three years, the agency that owns the particular property can approve the lease. It must, however, send a copy of the transaction to the Property Office. If the property is to be rented for less than three years, and the annual rent is between \$5,000 and \$7,500, the Property Office can approve the lease. Finally, if the property is to be rented for more than three years, or the annual rent is more than \$7,500, the transaction must be approved by the Governor and the Council of State. (See 1 NCAC 6A .0306.)

The statutes contain a provision which exempts certain leases from the general provisions. G.S. 146-32 provides that:

"The Governor, acting with the approval of the Council of State, may adopt rules and regulations:

- (1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and
- (2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.

North Carolina, in substance then, authorizes the Department of Administration to sell, lease or rent property owned by the State; and the law requires the Governor and the Council of State to approve such transaction. The overriding concern is that any transaction must be in the best interest of the State.

B. METHODS OF SELLING AND LEASING STATE-OWNED PROPERTY

IN OTHER STATES

The Committee reviewed the methods of selling and leasing State-owned property in various other states. Generally, their

systems do not vary significantly from North Carolina's. Some agency has the responsibility to dispose of the property. That agency is under a compulsion to act "in the best interest of the State"; and another agency reviews the transaction to assure the State's interest is protected. See the Committee Counsel's memorandum dated September 17, 1982, which summarizes the selling and leasing methods in various other states, and the statutory and regulatory provisions of the specific states.

C. SUMMARY OF REMARKS BY INTERESTED PERSONS

The Committee heard from officials of some of the State agencies and private individuals who were interested in the subject matter of the study.

Mr. Charles Grady, Director of the State Property Office gave a general overview of the steps his office takes in perfecting sales and leases of State-owned lands to nonpublic entities. Mr. Grady's memorandum dated March 8, 1982, addressed to the Committee Counsel, contains a list of leases which were approved by the Council of State in 1980 and 1981.

Mr. J. K. Sherron, Deputy Secretary of Government Operations, Department of Administration, clarified for the Committee the process by which State-owned land, which is available for sale or lease, is publicized. He also pointed out that, in cases such as the rental of the Flea Market at the State Fair grounds, efforts are made to keep rents reasonable, assure the State an adequate return on its property, and at the same time keep the prices of goods affordable to the buying public.

Mr. R. D. McMillan of the University of North Carolina, General Administrative Office, and Ms. Grace Wagner, University of North Carolina/Chapel Hill Property Officer, responded to a question concerning the leasing of University property to physicians on the faculty of the School of Medicine who are "moonlighting". The University officials pointed out that the physicians on the medical school faculty are not permitted to moonlight, and that no University property is leased to physicians. See the letters from the Acting Vice Chancellor of Business and Finance, Mr. Wayne R. Jones, to the Committee Counsel dated September 27, 1982 and November 5, 1982.

A tenant at the Farmers' Market, Mr. Tommy Austin, addressed the question of leasing only to the highest bidders. He said that it would not be fair to good tenants at the market "to be in a position to lose the lease to a high bidder each year..." since the premises he leased covered only "two walls and a concrete floor," and that all of the wiring and refrigeration system are installed at his expense.

Mr. Charles Murray, Manager of the State Farmers' Market, picked up on the theme of competitive bidding for market space in his address to the Committee. He was of the opinion that competitive bidding would be detrimental to the operation of the market, and many dealers would be forced to go out of business. While competitive bidding would yield more rental fees, Mr. Murray believed that "one or two producers would control the entire market." The written remarks of Mr. Murray are appended to the Committee Minutes of September 17, 1982.

The manager of the North Carolina State Fair, Mr. Arthur Pitzer, expressed his satisfaction with the present manner of leasing. The State Fair management favors repeaters, and it tries to make a profit for the State while maintaining good relations with the leasees. For an explanation of the space allocation procedures at the State Fair see Mr. Pitzer's memorandum of November 5, 1982 to the Committee Counsel.

FINDINGS

Upon a review of the North Carolina laws and procedures dealing with the selling and leasing of State-owned lands, and upon consideration of the remarks of the various individuals, the Committee makes the following findings:

(1) The present system for the disposition of State-owned lands is adequate; and any provision in the law compelling competitive bidding in every sale or lease transaction would not be in the best interest of the State.

(2) While in some instances, notably the Flea Market and the Farmers' Market, the State does not get the highest rent possible, it appears that the best interest of the State is being served by retaining good tenants, and by making the price of goods sold at those facilities more affordable to the buying public.

(3) There are sufficient safeguards in the law to assure that any disposition of State-owned lands is subject to public review since the Council of State has the ultimate authority to approve or disapprove any sale or lease transaction.

RECOMMENDATIONS

The Committee recommends that no changes be made in the laws dealing with the disposition either by sale or by lease of State-owned lands. However, it is suggested that the widest possible publicity be given to dispositions of State-owned lands by leases, which are approved by the Council of State. Such publicity can be accomplished by the posting of notice of the transaction in the courthouse of the county where the property is located.

At the request of the Committee, the State Property Office developed a proposed amendment to the North Carolina Administrative Code dealing with the disposition of State-owned lands by leases. The specific provision is 1 NCAC 6A .0306. It reads:

Notice of factual information regarding dispositions by lease approved by the Council of State are to be posted by the requesting agency in the courthouse of the county in which the properties are located for a period of not less than 30 days.

The Committee is satisfied that this language provides sufficient publicity of lease transactions.

